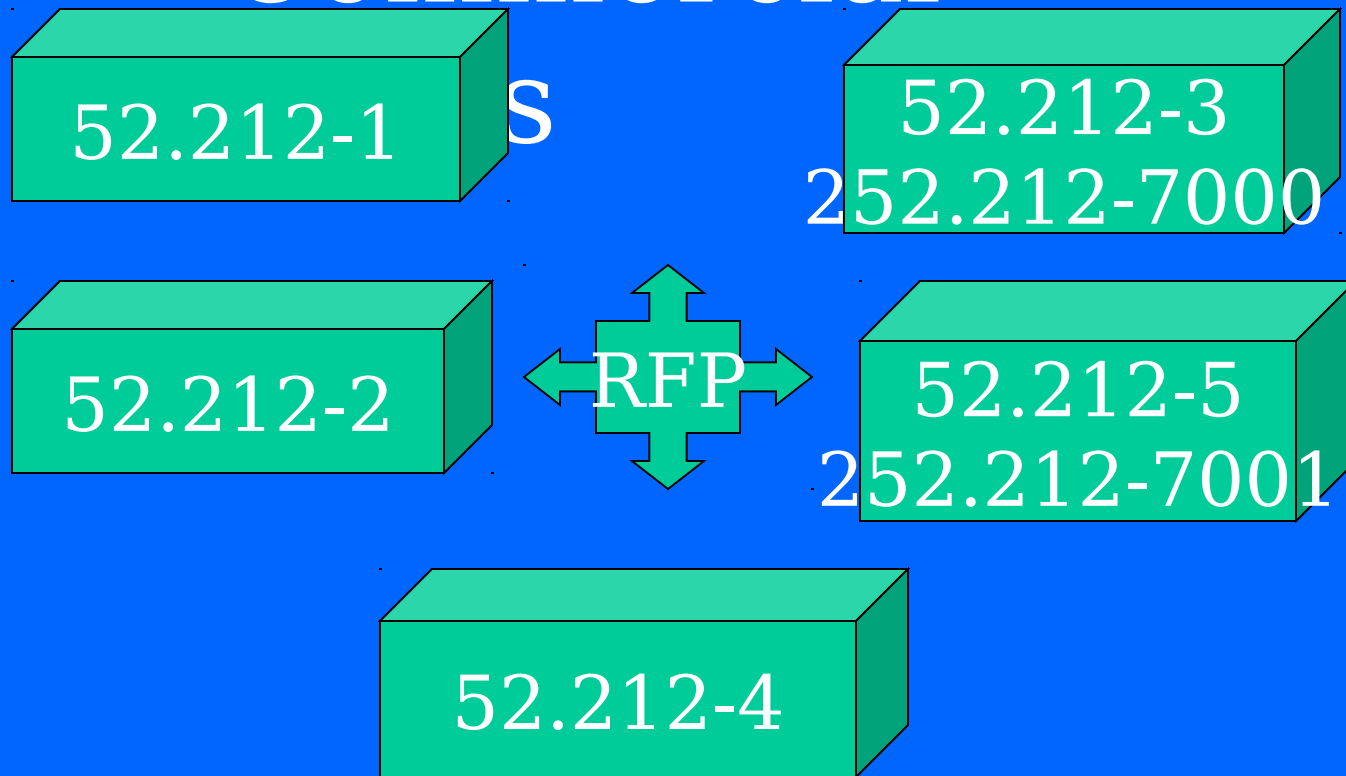


How to Prepare a Commercial Item Solicitation

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(Updated 8/27/04)

Required Clauses - Commercial



Commercial Item Template



- **SF 1449 - Solicitation/Contract/Order for Commercial Items**
 - **Response Sheet for No Offer, Addendum to SF 1449 for Blocks 8 (offer due date), 9 (receipt locations for mailed, hand-carried and fax offers) and 17 (DUNS #/remittance address), & Addendum for Blocks 19-24 Schedule of Supplies/Services**
- **52.212-4 - Contract Terms & Conditions (referenced) - Always Check Block 27a of SF 1449**
 - **Addendum for paragraph f (Risk of Loss) and g (Invoice)**
 - **Referenced contract clauses in numerical sequence**
 - **Full text contract clauses in numerical sequence (e.g. IDTCs, options, EPAs, and warranties)**
- **52.212-5 -Contract Terms & Conditions to Implement Statutes/Executive Orders**
 - **Addendum to 52.212-5 - additional FAR, DFARS, or DLA clauses required to implement Statutes or Executive Orders (e.g. FAR clauses for obtaining cost and pricing data), incorporate clauses by reference/full text in numerical sequence (include full text clauses that implement the Berry amendment, i.e., 252.225-7012 and 7014, if acquisition exceeds SAT)**
 - **252.212-7001 - Prescribed Terms & Conditions to Implement Statutes/Executive Orders (DFARS)**
- **Contract Documents/Exhibits/Attachments such as Commercial Item Description/Statement of Work and Delivery Schedule**

Commercial Item Template (Continued)



- **52.212-1 - Instructions to Offerors (referenced) - Always Check Block 27(a) of SF1449**
 - Addendum for paragraphs b (Fax Offers), c (Period of Acceptance), e (Multiple Offers), h (Multiple Awards), & j (DUNS#)
 - Referenced provisions in numerical sequence
 - Full text provisions in numerical sequence (e.g. Place of Performance provisions if approved above PCO)
 - Special Instructions for Submission of Source Selection Proposal Information
 - Attachment I - Technical Proposal (past performance/PDM, socioeconomic proposal, JWOD proposal, and proposal instructions for any other factors used- if full text provisions are used, they must be in numerical sequence)
 - Attachment II - Business Proposal (generally not required)
- **52.212-2 - Evaluation - Commercial Items (cite evaluation factors and importance of technical and price)**
 - Addendum to 52.212-2
 - Evaluation Criteria Listed for each Technical Factor
 - Five Level Adjective Descriptions for Rating Technical Factors Cited
 - Additional Source Selection Evaluation Procedures
 - Evaluation of Options Provisions(s)
- **52.212-3 -Offeror Representations and Certifications**
 - Addendum to 52.212-3 - Use 252.212-7000 - Offeror Representations and Certifications DFARS

Solicitation Provisions & Contract Clauses

A green square with a black border and a small folded corner at the bottom right. The text "RFP" is written in bold black letters in the center.

RFP

- Include Only Clauses
 - Required by Law, Regulation, Executive Orders
 - Determined to be Consistent with Standard Commercial Practice in Part 12
 - What is the custom in the marketplace, even if a particular firm does not employ it ?
- May Include Other FAR Provisions When Use is Consistent with Part 12
- May Supplement Provisions to Reflect Agency Unique Statutes
- Highlight Provisions That are Not Consistent with Commercial Practice

Tailoring of Clauses/Provisions



- May Tailor Instructions to Offerors and Contract Terms and Conditions to Adapt to Market Conditions
- Can Not Tailor Statutory Provisions
- May Not Tailor Inconsistent with Customary Practices; May be Waivable (One Level Above PCO) if Practice Inconsistent with Government Need
- Tailoring Must be Accomplished by Addenda (PCOs may not tailor required clauses/provisions by altering the actual text of the provision/clause)

Addenda

- Used for:
 - Tailoring of FAR 52.212-1 (Instructions to Offerors) and 52.212-4 (Contract Terms and Conditions)
 - Provisions/clauses other than those required by FAR, DFARS, and DLAD Part 12 that are necessary for contract performance
 - Options
 - EPA
 - IDTCs
 - Warranty
 - Technical Data Rights
 - Continuation of SF 1449
- Block 27a of SF 1449 is always checked
 - Since FAR 52.212-1 and 4 are referenced in Template #3

Tailoring Limits

- Can Be Tailored
 - FAR 52.212-1 (Instructions to Offerors)
 - FAR 52.212-2 (Evaluation)
 - FAR 52.212-3 (Offeror Representations & Certifications)
 - FAR 52.212-4 (Contract Terms and Conditions), except the following paragraphs based on law
 - a. Assignments
 - b. Disputes
 - c. Payment (except when fast pay procedures are authorized)
 - d. Invoices
 - e. Other compliances
 - f. Compliance with laws unique to Government contracts
- Can Not Be Tailored
 - FAR 52.212-5 (Contract Terms and Conditions)
 - DFARS 252.212-7001 (Contract Terms and Conditions)
- Note: Tailoring does not apply to deletion of inapplicable portions of FAR 52.212-3, FAR 52.212-5, and DFARS 252.212-7001

Clauses Waived by DLA That Can Be Included, If Required, in Commercial Item RFPs

- FAR 52.203-3 - Gratuities
- FAR 52.211-5 - Material Requirements
- FAR 52.215-20 - Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data
- FAR 52.215-21 - Requirements for Cost or Pricing Data or Information Other than Cost or Pricing Data - Modifications
- FAR 52.216-2 - Economic Price Adjustment - Standard Supplies
- FAR 52.216-18 - Ordering
- FAR 52.216-19 - Order Limitations
- FAR 52.216-20 - Definite Quantity
- FAR 52.216-21 - Requirements
- FAR 52.216-22 - Indefinite Quantity
- FAR 52.216-27 - Single or Multiple Awards
- FAR 52.217-5 - Evaluation of Options
- DFARS 252.209-7001 - Disclosure of Ownership or Control by the Government of a Terrorist Country
- DFARS 252.209-7002 - Disclosure of Ownership or Control by a Foreign Government
- DLAD 52.211-9000 - Government Surplus Material
- DLAD 52.211-9003 - Conditions for Evaluation of Offers of Government Surplus Material
- DLAD 52.211-9005 - Conditions for Evaluation and Acceptance of Offers for Critical Safety Items
- DLAD 52.211-9006 - Changes in Contractor Status, Item Acquired and/or Manufacturing Processing/Facility - Critical Safety Items
- DLAD 52.211-9008 - Barcoding Requirements for DVD Shipments
- DLAD 52.211-9009 - Non-Acceptability of Government Surplus Material
- DLAD 52.211-9011 - Military Shipping Requirements
- DLAD 52.212-9000 - Changes - Military Readiness
- DLAD 52.212-9007 - Withholding of Material Review Board (MRB) - Critical Safety Items
- DLAD 52.217-9006 - Limitations on Surge and Sustainment (S&S) Investments
- DLAD 52.239-9000 - Y2K Compliance Notice

Unique Clauses for Acquisition of Commercial Items – FAR 12.4

- Changes
- Acceptance
- Termination
 - For Convenience - Contractor Paid for % of Work Completed/Direct Charges
 - For Cause – Includes All Remedies Available to Any Buyer in the Marketplace
- Implied Warranties of:
 - Merchantability
 - Fitness for a Particular Purpose
- Express Warranties
 - Solicit Same Warranties Provided to Public
 - May Specify Minimum Terms
 - Warranty Must Protect Needs, be Cost Effective, & P
 - Award Administration
 - Comply with Notice Period/Method



Common Commercial Practices

- Merger Clause
- Non-Disclosure Provisions
- Notice Requirements
- Right to Substitute Goods
- Waivers/Waiver Clause, Course of Performance
- Assignment Clause
- Seller Insisting on Buyer Inspection
- Exclusive Remedies Clause
- Statute of Limitations
- Advertisement/Endorsement
- Designing State as Forum for Actions

